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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE R. GARY KLAUSNER, U.S. DISTRICT JUDGE  
  
UNITED STATES OF AMERICA, )  
 )  
PLAINTIFF, )  
 )  
vs. ) No. CR 15-00595-RGK  
 )  
ANGELO HARPER, JR., )  
 )  
DEFENDANT. )  
\_\_\_\_\_

REPORTER'S TRANSCRIPT OF SENTENCING  
LOS ANGELES, CALIFORNIA  
MONDAY, OCTOBER 17, 2016  
1:31 P.M.

APPEARANCES:

FOR PLAINTIFF: OFFICE OF THE UNITED STATES ATTORNEY  
BY: ANNE CARLEY PALMER  
ASSISTANT UNITED STATES ATTORNEY  
312 NO. SPRING STREET  
LOS ANGELES, CALIFORNIA 90012  
213.894.0282

FOR DEFENDANT: FEDERAL PUBLIC DEFENDER'S OFFICE  
BY: RACHEL A. ROSSI  
DEPUTY FEDERAL PUBLIC DEFENDER  
321 EAST 2ND STREET  
LOS ANGELES, CALIFORNIA 90012  
213.894.4406

\_\_\_\_\_  
SANDRA MacNEIL, CSR 9013, RPR, CRR, RMR  
Official Court Reporter, U.S. District Court  
255 East Temple Street, Room 181-F  
Los Angeles, CA 90012; 213.894.5949

LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 17, 2016

1:31 P.M.

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THE CLERK: Calling calendar item No. 2, case  
No. Criminal 15-595-RGK, United States of America versus  
Anglo Harper, Jr.

Counsel, please state your appearances.

MS. PALMER: Good afternoon, Your Honor. Carley  
Palmer for the United States.

THE COURT: Counsel.

MS. ROSSI: Good afternoon, Your Honor. Rachel Rossi  
on behalf of Anglo Harper, Jr., who is present in custody.

THE COURT: Thank you, Counsel. If you and your  
client could approach the podium.

MS. ROSSI: Yes, Your Honor.

THE COURT: Okay. This is the time set for  
sentencing. The Court has read and considered multiple  
documents, including the government's position paper and the  
defense position paper, all the exhibits and the defense  
papers, the presentence report.

Are there any documents that I have not been furnished  
with that I should look at before sentencing?

MS. PALMER: No, Your Honor.

MS. ROSSI: No, Your Honor.

1 THE COURT: Okay. And Counsel, then, do you wish to  
2 be heard as far as sentence?

3 MS. ROSSI: Yes, Your Honor, I do.

4 As set forth in our position paper, the defense believes  
5 that the mandatory minimum sentence of 15 years is sufficient  
6 but not greater than necessary here. And I do believe that  
7 first the Court has to resolve the defense one objection to the  
8 presentence report, which is that the upward adjustment under  
9 United States Sentencing Guideline Section 2G2.2(b)(7)(D) does  
10 not apply, because the Court has no evidence of possession of  
11 600 or more images. And as detailed in the position papers,  
12 the government has that burden, to show by clear and convincing  
13 evidence that 600 or more images were possessed. The case  
14 cited in the defense position paper, *United States vs.*  
15 *Kuchinski*, K-u-c-h-i-n-s-k-i, a Ninth Circuit 2006 case, dealt  
16 with this specific situation, and in that case, the Ninth  
17 Circuit held that in order to show that possession of over 600  
18 images was proven, in order to have this enhancement, that the  
19 government has the burden to show that it was possessed  
20 knowingly or that it was on allocated space. And the  
21 government has presented no facts whatsoever or evidence to  
22 indicate that more than 32 images here were on allocated space  
23 in any of Mr. Harper's devices that were searched.  
24 Accordingly, the defense position is that this enhancement does  
25 not apply and that the resulting offense level is 33 with a

1 guideline range of 135 to 168 months.

2 THE COURT: Okay.

3 MS. ROSSI: And if the Court would prefer, I can  
4 continue to argue or --

5 THE COURT: Go ahead, finish, yeah.

6 MS. ROSSI: Thank you, Your Honor.

7 The second portion of the defense argument is simply that  
8 the history and characteristics of Mr. Harper, notwithstanding  
9 the guideline range that the Court may determine is proper  
10 here, his history and characteristics reveal that a sentence of  
11 15 years is sufficient but not greater than necessary. He's  
12 not a well-seasoned offender who's had multiple violations and  
13 who has had the opportunity for rehabilitation and failed.

14 Mr. Harper was 18 years old when these charges began to be  
15 investigated against him, and he never had the opportunity for  
16 rehabilitation, for treatment, for the chance to try and to  
17 correct the issues that he has.

18 In addition, the letters attached to the defense position  
19 paper reveal that he has a very strong network of family and  
20 friends in the community who support him. This includes a  
21 long-time family friend who's a law enforcement officer. It  
22 includes his church, and it includes a very extended family.  
23 These people provided letters that describe Mr. Harper as  
24 someone with moral character, someone who chooses to volunteer  
25 in the community, someone who is hard-working, who's worked

1 even at the young age that he was before arrested in this case,  
2 and who was consistently attending school and trying to have a  
3 career and a future.

4 For these reasons, Your Honor, Mr. Harper is a person who  
5 has the ability for rehabilitation, because he has this support  
6 in his community, because he was so young and he was never  
7 given the chance for rehabilitation yet.

8 So here our position is that 180 months, which would still  
9 be far above the guideline range given the defense position on  
10 the guidelines here, is sufficient but not greater than  
11 necessary.

12 THE COURT: Okay. Thank you, Counsel.

13 MS. ROSSI: Thank you.

14 THE COURT: Counsel, you wish to be heard?

15 MS. PALMER: Yes, Your Honor.

16 The enhancement for 600-plus images includes all relevant  
17 conduct. So that would be the possession that was charged for  
18 2014 but also for the collection that was found in 2015, the  
19 distribution and the advertising that we addressed at the trial  
20 in July. The advertisement from the defendant was for "tons of  
21 pics and vids." We know from the reports and from the  
22 testimony that we heard that there was a largely accessible  
23 collection, and we know that each video is considered 75 images  
24 apiece for the purposes of the sentencing enhancement.

25 Additionally, while we applaud the support network for the

1 defendant and agree that treatment is an important option and  
2 should be given for Mr. Harper, the defense feels that a  
3 low-end guideline sentence is what's appropriate in this case  
4 as laid out in its papers. Otherwise, we would submit on the  
5 papers.

6 THE COURT: Okay. Anything else?

7 MS. ROSSI: Just briefly, Your Honor.

8 "Tons of pics and vids" is hardly clear and convincing  
9 evidence of 600 or more images, and I think that the Court  
10 needs to look at the government's evidence, and there just  
11 isn't any.

12 THE COURT: Okay.

13 MS. ROSSI: Thank you, Your Honor.

14 THE COURT: Does the defendant wish to be heard?

15 MS. ROSSI: Your Honor, on advice of counsel,  
16 considering the pending state charges, he would respectfully  
17 decline.

18 THE COURT: Okay. No problem.

19 MS. ROSSI: Thank you.

20 THE COURT: The Court, in reviewing the evidence,  
21 feels that there is sufficient evidence to justify the  
22 enhancement under 2G2.2(b)(7)(D), and therefore, the Court  
23 would find that the guideline level would be a guideline level  
24 48, a Category I as far as criminal history goes, which would  
25 be a range between 235 and 289 -- or 293.

1           Therefore, it is ordered the defendant shall pay a fine to  
2           the United States -- or excuse me, shall pay to the  
3           United States a special assessment of \$300.

4           All the tentative conditions have been distributed to both  
5           sides in this case, have they not?

6           MS. ROSSI: They have, Your Honor.

7           MS. PALMER: Yes, Your Honor.

8           THE COURT: Okay, that's what I thought. Okay.

9           MS. ROSSI: I only have one objection, if I may, Your  
10          Honor.

11          THE COURT: Sure.

12          MS. ROSSI: Condition No. 2, there was no indication  
13          in the PSR that Mr. Harper has any history of controlled  
14          substance abuse whatsoever, and we would just request that that  
15          condition not be applied.

16          THE COURT: Does the government have any indication at  
17          this time of controlled substance abuse?

18          MS. PALMER: No, Your Honor.

19          THE COURT: Okay.

20          Okay. Again, it is ordered defendant shall pay to the  
21          United States a special assessment of \$300, which is due  
22          immediately. Any unpaid balance shall be due during the period  
23          of imprisonment at a rate of no less than \$25 per quarter and  
24          pursuant to the Bureau of Prisons' Inmate Financial  
25          Responsibility Program.

1 Pursuant to the guideline level Section 5E1.2(a), all  
2 fines are waived, as the Court finds that the defendant has  
3 established that he is unable to pay and is not likely to  
4 become able to pay any fine.

5 Pursuant to the Sentencing Reform Act of 1984, it's the  
6 judgment of the Court that the defendant is hereby committed on  
7 Count 1 through Count 3 of the indictment to the custody of  
8 Bureau of Prisons for a term of 235 months. This term consists  
9 of 235 months on each of Count 1 and Count 3 of the indictment,  
10 to be served concurrently.

11 The Court recommends that the Bureau of Prisons conduct a  
12 mental health evaluation of the defendant and provide all  
13 necessary treatment.

14 Upon release from imprisonment, the defendant shall be  
15 placed on supervised release for a term of life. This term  
16 consists of life on each of Count 1 and Count 3 of the  
17 indictment, all such terms to run concurrently under the  
18 following terms and conditions:

19 The defendant shall comply with the rules and regulations  
20 of the United States Probation Office and General Order 5-02.

21 The second condition is not going to be imposed.

22 The third condition is -- the next condition that will be  
23 imposed would be No. 3, which is, during the period of  
24 community supervision, the defendant shall pay the special  
25 assessment in accordance with the judgment's order pertaining



1 to such payment.

2 Next, the defendant shall not obtain or possess any  
3 driver's license, Social Security number, birth certificate,  
4 passport, or any other form of identification in any name other  
5 than the defendant's true legal name, nor shall the defendant  
6 use any name other than his true legal name without the prior  
7 written approval of the probation officer.

8 The defendant shall cooperate in a collection of DNA  
9 sample from the defendant.

10 The defendant shall possess and use only those computers,  
11 computer-related devices, screen user names, passwords, e-mail  
12 accounts and Internet service providers that have been  
13 disclosed to the probation officer upon commencement of  
14 supervision. Any changes or additions are to be disclosed to  
15 the probation officer prior to the first use. Computer and  
16 computer-related devices include personal computers, personal  
17 data assistants, Internet appliances, Internet -- or electronic  
18 games, cellular telephones and digital storage media, as well  
19 as their peripheral equipment that can access or can be  
20 modified to access the Internet, electronic bulletin boards,  
21 and other computers.

22 All computers, computer-related devices and their  
23 peripheral equipment used by the defendant shall be subject to  
24 search and seizure. This shall not apply to items used by --  
25 at the employment site which are maintained and monitored by

1 the employer.

2 The defendant shall comply with the rules and regulations  
3 of the Computer Monitoring Program. The defendant shall pay  
4 the cost of the Computer Monitoring Program in the amount of  
5 not to exceed \$32 per month per device connected to the  
6 Internet.

7 The defendant shall register as a sex offender and keep  
8 the registration current in each jurisdiction where he resides,  
9 where he's employed, and where he is a student to the extent  
10 the registration procedures have been established in each  
11 jurisdiction. When registration for the first time, the  
12 defendant -- when registering for the first time, the defendant  
13 shall also register in the jurisdiction in which the conviction  
14 occurred if different from the jurisdiction of residency. The  
15 defendant shall provide proof of registration to the probation  
16 officer within 48 hours of registration.

17 The defendant shall participate in a psychological  
18 counseling and psychiatric treatment or a sex offender  
19 treatment program as approved by and directed by the probation  
20 officer. The defendant shall abide by all rules, requirements  
21 and conditions of such program. The probation officer shall  
22 disclose a presentence report and any previous mental health  
23 evaluations or reports to the treatment provider.

24 As directed by the probation officer, the defendant shall  
25 pay all or part of the cost of treating the defendant's

1 psychological or psychiatric disorder to the aftercare  
2 contractor during the period of community supervision, pursuant  
3 to Title 18 of the United States Code, Section 3672. The  
4 defendant shall provide payment or proof of payment as directed  
5 by the probation officer.

6 The defendant shall not view or possess any materials,  
7 including pictures, photographs, books, writings, drawings,  
8 videos or video games depicting and/or describing child  
9 pornography as defined in Title 18 of the United States Code,  
10 Section 2256, subdivision 8, or explicitly -- or sexually  
11 explicit conduct as defined in Title 18 of the United States  
12 Code, Section 2256, subdivision 2. This condition does not  
13 prohibit the defendant from possessing materials solely because  
14 they are necessary and are used for a collateral attack, nor  
15 does it prohibit him from possessing materials prepared or used  
16 for the purposes of his Court-mandated sexual offender's  
17 treatment when the defendant's treatment provider or the  
18 probation officer has approved the possession of such materials  
19 in advance.

20 The defendant shall not own, use or have access to the  
21 services of any commercial mail receiving agency, nor shall he  
22 open or maintain a post office box without the prior written  
23 approval of the probation officer.

24 MS. ROSSI: Your Honor, I'm sorry to interrupt, but as  
25 to the next condition that the Court is about to read,

1 Mr. Harper informs me that his parents' home, which he would  
2 likely be returned to upon his release, is possibly within a  
3 hundred feet of a school. And so if the Court would modify  
4 that condition to allow him or permit him to live at his  
5 parents' home, I can provide the address for the record.

6 THE COURT: Yeah, I would be surprised -- it may be --  
7 if it borders, it would be within a hundred feet. If it's more  
8 than a house away, it probably wouldn't be.

9 Do you want to check with your defendant and see whether  
10 or not it's -- if there's any houses between him and the  
11 schoolyard?

12 MS. ROSSI: If I could perhaps just place the address  
13 on the record and --

14 THE COURT: Sure.

15 MS. ROSSI: -- for clarification, maybe that would  
16 help.

17 I don't know exactly how many feet, but it's across a  
18 yard, across -- it may be within a hundred feet. But the  
19 address is 12959 --

20 THE COURT: 12959?

21 MS. ROSSI: Yes.

22 THE COURT: Is that correct? Okay.

23 MS. ROSSI: Lasselle, L-a-s-s-e-l-l-e, Street.

24 THE COURT: L-a-s-s-e-l-e?

25 MS. ROSSI: Two L's.

1 THE COURT: Two L's. Okay.

2 MS. ROSSI: Yes. In Moreno Valley, California.

3 THE COURT: Okay.

4 MS. ROSSI: Thank you, Your Honor.

5 THE COURT: Counsel, I'm going to take a look at that.  
6 I can Google that when I get off the bench, and if it's within  
7 a hundred feet, I'll make that decision.

8 MS. ROSSI: Thank you, Your Honor.

9 THE COURT: But if not, the defendant shall not  
10 frequent or loiter within a hundred feet of any schoolyard,  
11 public -- or excuse me, public swimming pool area or parks or  
12 playgrounds, youth centers, video arcade facilities or other  
13 places primarily used by persons under the age of 18.

14 The defendant shall not associate or have verbal, written,  
15 telephonic or electronic communication with any person under  
16 the age of 18, except in the presence of the parent or legal  
17 guardian of said minor and on the condition the defendant  
18 notify the parent or legal guardian of his conviction in the  
19 instant offense and prior offenses. This provision does not  
20 encompass persons under the age of 18, such as waiters,  
21 cashiers, ticket vendors, et cetera, who the defendant must  
22 interact with in order to obtain ordinary and usual commercial  
23 services.

24 The defendant shall not associate with, own, control,  
25 volunteer or be employed in any capacity by any business

1 organization that causes him to regularly contact persons under  
2 the age of 18.

3 The defendant shall not affiliate with, own, control or be  
4 employed in any capacity or any business whose principal  
5 product is the production of the selling of materials depicting  
6 or describing sexually explicit conduct as defined in Title 18  
7 of the United States Code, Section 2256(2).

8 The defendant's employment shall be approved by the  
9 probation officer, and any changes in employment must be  
10 pre-approved by the probation officer. The defendant shall  
11 submit the names and addresses of the proposed employer to the  
12 probation officer at least ten days prior to any scheduled  
13 changes.

14 The defendant shall submit to search and seizure at any  
15 time, with or without a warrant, by any law enforcement or  
16 probation officer with the defendant's person -- of the  
17 defendant's person and property, house, residence, vehicle,  
18 papers, computers or other electronic communication or data  
19 storage devices media and effects upon reasonable suspicion  
20 concerning a violation of or condition of supervised or  
21 unlawful conduct by, or by any probation officer in the lawful  
22 discharge of the officer's supervisory functions.

23 The Court authorizes the probation officer to disclose the  
24 presentence report and any previous mental health evaluation  
25 reports to the treatment provider. The treatment provider may

1 provide information, excluding the presentence report, to the  
2 state or local social service agencies, such as the State of  
3 California Department of Social Services, for the purpose of  
4 the client's rehabilitation.

5 The Court is sentencing defendant to the low end of the  
6 guideline range because based on basically the exhibits that  
7 have been submitted by counsel for the defense, the support  
8 that he has with his family and those letters that have been  
9 submitted to the Court, I feel that this is appropriate, not  
10 more than nor less than is appropriate under the facts of this  
11 case.

12 If you wish to appeal the sentence, it has to be done  
13 within 14 days of today.

14 And is there anything further from the government?

15 MS. PALMER: No, Your Honor.

16 THE COURT: Counsel, anything further from you?

17 MS. ROSSI: No, Your Honor.

18 THE CLERK: Judge, may I just clarify one thing? When  
19 you imposed the sentence of 235 months and the supervised  
20 release of life, was that as to Counts 1 through 3?

21 THE COURT: 1 through 3, yes.

22 THE CLERK: Thank you.

23 THE COURT: Did I say 1 to 3?

24 THE CLERK: 1 and 3.

25 THE COURT: Oh, no. It's 1 through 3.

1 THE CLERK: Thank you.

2 THE COURT: And they're all concurrent.

3 Thank you very much, Counsel.

4 Good luck.

5 MS. PALMER: Thank you, Your Honor.

6 MS. ROSSI: Thank you, Your Honor.

7

8 *(Proceedings concluded at 1:49 p.m.)*

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*CERTIFICATE*

*I hereby certify that pursuant to Section 753,  
Title 28, United States Code, the foregoing is a true and  
correct transcript of the stenographically reported proceedings  
held in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the  
Judicial Conference of the United States.*

*Date: January 24, 2017*

*/S/ SANDRA MACNEIL*

*Sandra MacNeil, CSR No. 9013*